

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders**

REFERENCE: AL  
TJK 6/2014:

3 December 2014

Dear Mr. Khamidov,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Government information we have received concerning **draft amendments to the Law on Public Associations of 12 May 2007, which foresee new inspection procedures for public associations and new registration and authorization mechanisms for associations receiving foreign funding.**

According to the information received:

The Ministry of Justice submitted to the Government draft amendments to the Law on Public Associations of 12 May 2007.

The Government is considering submitting these amendments to the Parliament at its next session in mid-December 2014.

These amendments introduce the following provisions:

*Article 34*

- “The procedure for inspection of statutory activities of public associations is approved by the Ministry of Justice of Republic of Tajikistan”

*Article 38*

- “Voluntary contributions and donations, grants, property received by a public association from foreign states and foreign organizations, established with participation of foreign entities, as well as through other individuals and

organizations are to be accounted by registering authority in the Special Register of Humanitarian Assistance.”

- “Implementation of programs, funded by specified entities from the side of public associations is only allowed after taking record in this Register.”
- “Procedure for maintaining the specified Register is defined by the Government of Republic of Tajikistan.”

Whilst acknowledging that these amendments have not yet been adopted, we would like to express our concern that they appear to contravene international human rights law and standards, especially States’ obligation to recognize and guarantee the right of an association to freely carry out its statutory activities, including fundraising. We are also concerned that the amendments, which foresee a registration and de facto authorization procedure for accepting and using foreign funds, place an additional burden on public associations that appears to contradict the State’s obligation to establish and maintain a conducive environment for the free operations of associations and could undermine other fundamental freedoms in Tajikistan. Moreover, we express concern at the requirement for authorities to control the compliance of public associations with their own founding documents. This could lead to a violation of the State’s obligation to not interfere with the exercise of the right to freedom of association.

Additionally, we are concerned that the general public, including members of associations, were reportedly not given the opportunity to submit their views on the amendments. The participatory, inclusive and transparent process of consultation and review of draft laws, in particular those affecting fundamental rights such as the right to freedom of association, contributes to strengthening the legal framework for the protection and promotion of human rights. In addition, we are concerned at the vagueness of the suggested provisions that could lead to a restrictive interpretation of the rights to freely associate. We remind your Excellency’s Government that legal certainty is a principle of national and international law whereby the law must provide those subject to it with the ability to regulate their conduct.

Legal frameworks related to the ability of associations to seek, receive and use resources may have a significant impact on the exercise of the right to freedom of association. Restrictions to this right are strictly governed by international human rights law which provide that these must be proportionate and a necessary response to a pressing social need. In this regard we are concerned that a legal requirement to systematically account for funding from foreign sources and to apply to a new registry to receive and use foreign funding would not meet this test of necessity and proportionality.

We are further concerned that the requirement to account for sources of foreign funding could discriminate against and stigmatise civil society organisations and human rights defenders, as well as deterring them from seeking resources to undertake their activities.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to this issue.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned information.

2. Please explain how the proposed legislative changes are in accordance with the obligations of Tajikistan under international law, particularly concerning the rights to freedom of association and the obligation to maintain a conducive environment for the operation of associations.

3. Please provide information about the current status of the proposed changes to the Government.

We would appreciate receiving a response within 60 days.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Khamidov, the assurances of our highest consideration.

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Maina Kiai  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst  
Special Rapporteur on the situation of human rights defenders

**Annex**  
**Reference to international human rights law**

Concerning the concerns mentioned in this letter, it is necessary to recall the following relevant articles of the International Covenant on Civil and Political Rights, which Tajikistan accessed on 4 January 1999.

- article 19 points 1) and 2) which stipulate that everyone has the right to hold opinions without interference and the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.

- article 22 point 1) and 2) which provide that everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of their interests, and that the only possible restrictions are those prescribed by law, necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

In communication No. 1274/2004, the Human Rights Committee observed that “the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association [...]”<sup>3</sup> Accordingly, fundraising activities are protected under article 22 of the Covenant, and funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with article 22.

We also recall the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”. In addition article 13, point b) and c) of this Declaration provide for the right to solicit, receive, and utilize resources for the purpose of peacefully promoting and protecting human rights and fundamental freedom.

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly resolution 36/55) also states that the right to freedom of thought, conscience, religion or belief shall include,

inter alia, the freedom “to solicit and receive voluntary financial and other contributions from individuals and institutions.”

Moreover, it is necessary to recall Human Rights Council resolution 24/5, and in particular operative paragraph 2 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

Human Rights Council resolution 22/6 is also pertinent in that it calls upon States to ensure “(a) that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy”; and (b) “that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the Declaration (...), other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto” (OPs 8 and 9).

Of note is the work of the Special Rapporteur on the rights to freedom of peaceful assembly and of association which devoted one of its thematic reports to the Human Rights Council to access to funding for civil society organizations (A/HRC/23/39). In this report he indicated that in recent years, civil society actors have been facing increased control and undue restrictions in relation to funding they received, or allegedly received. Combined with the global financial crisis that has compelled some donors to reduce funding, this situation has, in many instances, led to a decline in the number of associations and a decrease in or readjustment of the activities of existing ones, or in worst cases, to the extinction of some associations. This problem is not isolated and exists in all parts of the world, usually as a result of undue restrictions occurring when an association: (a) seeks; (b) secures; or (c) uses financial resources; and these measures aim, in many cases, to silence the voices of dissent and critics.

In addition in his report on best practices (A/HRC/20/27) the Special Rapporteur indicated that the right to freedom of association obliges States to take positive measures to establish and maintain an enabling environment. It is therefore crucial that individuals exercising this right are able to operate freely. He also recognized the right of independent bodies to examine the associations’ records as a mechanism to ensure transparency and accountability, but such a procedure should not be arbitrary and must respect the principle of non-discrimination and the right to privacy as it would otherwise put the independence of associations and the safety of their members at risk.

In many countries, domestic funding is very limited or non-existent, leading associations to rely on foreign assistance to conduct their activities. The Special

Rapporteur echoed the recommendations put forward by the then Special Representative of the Secretary-General on the situation of human rights defenders who affirmed that “Governments must allow access by NGOs to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments” (A/59/401, para. 82).